

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1476 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KASHIBEN W/O. MANSUKHLAL D.MEHTA

Versus

DIST. AYURVED OFFICER & 3 ORS

Appearance:

MRS SANGEETA N PAHWA for Petitioner
MR HS MUNSHAW for Respondent No. 1
None present for Respondent No. 2, 4
MR DP JOSHI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/10/97

ORAL JUDGMENT

#. The petitioner, widow of late Mansukhlal D. Mehta, who was a Vaidya in the District Panchayat, Rajkot, by way of this writ petition under Article 226 of the Constitution, seeks to challenge the action of respondents of not paying family pension to her even

though she is entitled for the same from the year 1981.

#. The facts of the case in brief are that the husband of the petitioner was appointed as Vaidya in the year 1952 under respondent No.1. He was ordered to be removed from services on 26.6.72. He filed Regular Civil Suit No.895 of 1972 in the Court of Civil Judge (S.D.), Rajkot, challenging therein the order of his dismissal from service. That suit was transferred to the Court of Second Joint Civil Judge (J.D.), Rajkot. The said suit came to be dismissed by trial Court on 25.2.77. The husband of the petitioner filed Civil Appeal No.83 of 1977 against dismissal of suit in the Court of District Judge, Rajkot, which was transferred to the Court of Joint District Judge, Rajkot, who by its judgment and decree dated 19th August 1978, was pleased to allow the appeal and declared the dismissal of husband of the petitioner from services as illegal, inoperative and void. Dissatisfied with the judgment and decree of the first appellate Court, the respondent, District Panchayat, Rajkot, filed Second Appeal No.501 of 1978 before this Court. This appeal was admitted by this Court on 5.12.78. The District Panchayat, Rajkot, filed Civil Application No.2800 of 1978 in Second Appeal No.501 of 1978 and prayer has been made therein for staying of the execution of decree passed by the Joint District Judge, Rajkot, in Civil Appeal No.83 of 1977. On 5.12.78, this Court issued Rule in the Civil Application and it was made absolute on 2.4.79. So the decree in favour of husband of the petitioner remained under stay till the second appeal was finally decided by this Court on 6th March 1991. The Second Appeal of respondent, District Panchayat, Rajkot was dismissed. During the pendency of this appeal before this Court, the husband of the petitioner expired on 30th November 1987. After dismissal of Second Appeal, the respondent No.1, on 25th February 1992, sanctioned family pension to the petitioner and also certified that the petitioner is entitled for family pension. The respondent No.4, on 10.6.92, informed the respondent No.1 to furnish certain details to enable it to take necessary action for paying the family pension to the petitioner. Thereafter the petitioner made several representations to the concerned authorities for family pension but all remained unconsidered. On 26.6.92, the petitioner also sent a notice through her advocate but it also remained unreplyed. The petitioner filed Misc. Civil Application No.64 of 1992 before this Court for initiating appropriate proceedings under the Contempt of Courts Act, 1971, for deliberate and wilful breach of the order passed by this Court in Second Appeal No.501 of 1978. In

those proceedings, the learned counsel who appeared for respondents made a statement that the respondents have already started paying minimum family pension to the petitioner. The petitioner filed this Special Civil Application before this Court on 22nd February 1993 and prayers have been made therein for directions to the respondents to pay her family pension with interest thereon at the rate of 18% p.a.

#. This Court has passed many orders from time to time and reading thereof gives out that this Court has taken a serious view in the matter. However, from the reply which has been filed by respondents, it is no more in dispute that all the amount which was payable to the petitioner has already been paid and only the dispute now remains is for the claim of the petitioner for interest.

#. The learned counsel for the petitioner also very fairly submitted that whatever amount which was payable to the petitioner has been paid but the same has been paid after considerable delay and as such, the petitioner should be awarded interest on the delayed payment of amount of family pension. The rate of interest has been claimed at 18% p.a.

#. The learned counsel for respondents contended that there is no culpable or deliberate delay in processing the papers of family pension of the petitioner as well as making payment of the amount.

#. I do not find any justification in this contention of the learned counsel for respondents. The reply has been filed by respondents only on 16th September 1997. From the reply, it comes out that amounts have been paid on different dates to the petitioner and by the end of August 1994, whole amount has been paid. However, the learned counsel for respondents has failed to show that the petitioner is in any manner at fault in the matter. It is understandable that till 6th March 1991, as the Second Appeal was pending in which stay was operating against the execution of decree passed in favour of husband of petitioner, the amount of family pension has not been paid to the petitioner, but after that date the amount which was found payable to the petitioner should have been paid her and the family pension should have also been fixed in time. The Second Appeal was decided on 6.3.91 and even if the period upto 6.3.91 is not taken for determining the amounts payable to the petitioner, then too, I fail to see any justification to make any delay in completion of papers of family pension as well as other benefits after 1.6.91. It is a case of family

pension and unless there is a reasonable cause with respondents to delay the determination of payment of the same, certainly the interest has to be given to the petitioner. The petitioner has also filed contempt application before this Court and therein defence has been taken that provisional family pension has been started. The entitlement of the petitioner for family pension has not been disputed at any point of time but delay has been made in determination of the amount as well as for the payment thereof. There may be possibility that the service record of the husband of the petitioner may not be available, but still no fault or error or negligence can be attributed to the petitioner. It is respondents who are responsible for all these things. If they are not properly keeping and maintaining records of its employees, then it is their own fault for which nobody else can be blamed. Only on this count, I fail to see how they can justify their action of delaying the payment of family pension to the petitioner, a widow of servant of the District Panchayat.

#. The net result of the aforesaid discussion is that the respondents are at fault and they have not taken any prompt action in the matter after 6th March 1991 and as such it is a fit case where the petitioner should be awarded interest on the outstanding amount paid to her by Panchayat. Now the question which calls for consideration of this Court is at what rate interest should be awarded and from which date. The petitioner is claiming interest at the rate of 18% but it seems to be towards higher side. Even if we go by the rate of interest declared by Banks on deposits from time to time, I do not find that at any point of time, rate of interest would have been more than 12%. In view of this fact, I consider it to be appropriate and in the interest of justice that interest be awarded at the rate of 12% p.a. The next question is of the date from which interest should be allowed. The counsel for the parties have provided little help to this Court about the proceedings of Second Appeal. It is really shocking that though the respondent, District Panchayat, Rajkot, was appellant in the Second Appeal, its counsel is unable to make any statement before this Court as to whether there was any stay operating in the Second Appeal or not. Similar is the position of the counsel for the petitioner. However, I called for the papers of Second Appeal and I noticed therein, as already stated earlier, that decree passed by appellate Court in favour of husband of the petitioner was stayed by this Court which had continued till 6.3.91. So in view of this stay order of this Court, I find sufficient justification with the respondents not to do

anything in the matter till 6th March 1991. After dismissal of Second Appeal also, it is understandable that reasonable grace period has to be given to the respondents which has to be set off and this period cannot be of more than two months. So I fail to see any justification in the action of respondents not to determine the amount of family pension payable to the petitioner as well as not to finalize the pension papers on or before 1st June 1991. That is the date from which the petitioner certainly can make a claim for interest. After dismissal of Second Appeal, the petitioner made representations and notice has also been sent through her advocate but when nothing has been done, the petitioner has approached this Court. A poor widow has been subjected to all this agony and suffering to get the family pension etc., and because of inaction or omission on the part of respondents, she has to approach this Court by filing this Special Civil Application and it is no unknown that litigation in this Court heavily costs to the litigant. She has been deprived of the amount as well as interest which would have accrued thereon and further more she has been taxed for heavy expenses of litigation by respondents because of their inaction and omissions, even in a matter which pertains to family pension.

#. Taking into consideration the totality of the facts of this case, it is hereby ordered that the respondents shall pay to the petitioner, interest on all the dues which have been paid to her at the rate of 12% p.a. from 1st June 1991, till the date of payment of the amount. The calculation of interest payable to the petitioner has to be made within two months from the date of receipt of writ of this order and the payment of the amount so calculated should be paid to her within one month next.

#. In the result, this Special Civil Application succeeds as aforesaid. Rule and Special Civil Application stand disposed of in the aforesaid terms with costs which is quantified to Rs.2,000/-, as what the learned counsel for the petitioner stated as the amount incurred by petitioner towards actual expenses of this litigation, i.e. advocate fees, and other expenses of typing, Court fees etc.

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(sunil)